

ADOT File No.: JPA 05-077  
AG Contract No.: KR05-1164TRN  
Project: US 60 Widening  
Section: Gilbert Road - Power Road  
TRACS No.: H664901C  
Budget Source Item No.: 14405

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF MESA

THIS AGREEMENT is entered into this date June 30th 2006, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, acting by and through its MANAGER and CITY COUNCIL, (the "CITY").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. Incident to the State's roadway improvements on the Superstition Freeway (US 60), Gilbert Road to Power Road Segment, the City requests and the State agrees to incorporate in its plans, the installation of approximately 8.4 miles of fiber optic cable within one of the State's Freeway Management System (FMS) conduits and pull-boxes, from Val Vista Drive to Crismon Road on US 60 and from US 60 north to Southern Avenue on the Red Mountain Freeway (SR 202L), for the City's Intelligent Transportation System (ITS), herein collectively referred to as the "Project", at an estimated amount of \$252,474.00, as shown on Exhibit "A", attached hereto and made a part hereof. The City will reimburse the State for the actual costs of the Project, and provide maintenance to the City's ITS upon completion of the Project.

4. The parties hereto agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; b) The parties shall perform their responsibilities consistent with this Agreement; and c) Any change or modification to the Project will only occur with the mutual written consent of both parties.

THEREFORE, in consideration of the mutual covenants expressed herein, it is further agreed as follows:

NO. 28307  
Filed with the Secretary of State  
Date Filed: 6/30/06  
Janice K. Brewer  
Secretary of State  
By: [Signature]

## **II. SCOPE OF WORK**

### **1. The State shall:**

a. Upon execution of this Agreement, agree to be the City's designated agent for the Project, invoice the City \$252,474.00, for the estimated costs of the Project and provide an itemized list of said costs, which shall include fixed rates and fixed costs, as shown on Exhibit A. The actual costs of the Project shall be determined upon completion of construction.

b. Prepare design plans, specifications and other such documents and services required for construction bidding and construction of the Project, and provide to the City for their review and comment.

c. Advertise for bids and award one or more construction contracts(s) for the Project. Administer the Project and make all payments to the contractor(s). Be responsible for contractor claims for extra compensation due to delays or whatever reason, attributable to the State.

d. Upon completion of the Project and final inspection, notify the City in writing that the Project has been constructed in accordance with the Project documents and has been satisfactorily completed.

e. Grant or confirm, per established procedures of the State's Phoenix District Permit Office, that the City has a valid annual citywide Encroachment Permit on file, for routine/normal maintenance and emergency work provided by the City within the State's rights-of-way. Agree, any new construction or installation shall require a separate permit through the State's Phoenix District Permit Supervisor, as per the Phoenix District's established procedures.

f. Provide a recapitulation of the Project costs, including, but not limited to: design, construction, and design and construction administration costs and invoice or reimburse the City any difference between the estimated amount paid by the City and the actual costs of the Project, which includes fixed rates and fixed costs, as shown on Exhibit A.

### **2. The City shall:**

a. Upon execution of this Agreement, designate the State as authorized agent for the City and within 30-days after receipt of an invoice, remit \$252,474.00 to the State for the estimated costs of the Project, which shall include fixed rates and fixed costs, as shown on Exhibit A.

b. Review the design plans, specifications and other such documents and services required for construction bidding and construction of the Project and provide comments to the State as appropriate. Be responsible for any design consultant and contractor claims for extra compensation, due to delays or whatever reason, attributable to the City.

c. Upon completion and acceptance of the Project by the parties, provide proper maintenance to those elements referenced constructed under this Agreement. Obtain, per established procedures of the State's Phoenix District Permit Office, a valid annual citywide Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the City within the State's rights-of-way. Agree, any new construction or installation shall require a separate permit as per the Phoenix District's established procedures, which may be obtained through the District Office referenced herein.

d. Be responsible for the cost of moving the City's share of the fiber, should future widening or use of the said roadway be necessary.

e. Not be allowed to lease for profit, to any other private party, agency, or jurisdiction as constructed per final design plans.

f. Upon completion and acceptance of the Project, be responsible for the actual costs incurred by the State for the Project. If necessary, reimburse the State within 30-days after receipt of an invoice, any difference between the estimated amount paid by the City and the actual costs of the Project, which includes fixed rates and fixed costs, as shown on Exhibit A.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and said payments or reimbursements; provided however, that any provisions herein for maintenance provided by the City shall be ongoing. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-day (30) written notice to either party. It is understood and agreed, that should the City fail to maintain the Project as referenced herein, the State shall in no way be obligated to maintain the City's ITS system.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. "Each party (as "indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorneys' fees) (hereinafter collectively referred to as 'claims'), arising out of bodily injury of any person, (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers, except where the State is agent for the City.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State and City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and City at the end of the period for which the funds are available. No liability shall accrue to the State and the City in the event this provision is exercised, the State and City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

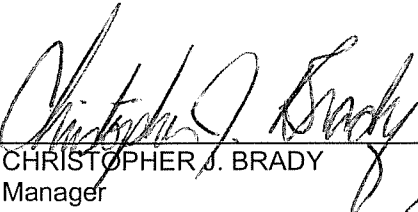
Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
Phone : (602) 712-7525  
FAX (602) 712-7424

City of Mesa  
City Manager  
P.O. Box 1466  
Mesa, AZ 85211-1466  
Phone : (480) 644-3333  
Fax : (480) 644-2175

10. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the agreement is in proper form.

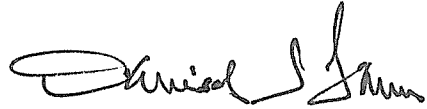
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written

**THE CITY OF MESA**


By   
CHRISTOPHER J. BRADY  
Manager

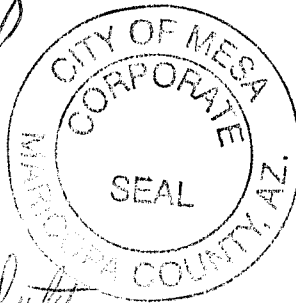
**STATE OF ARIZONA**

Department of Transportation

By   
DANIEL S. LANCE, P.E.  
Deputy State Engineer, Valley Transportation

ATTEST

By   
BARBARA JONES  
City Clerk



RESOLUTION NO. 8715

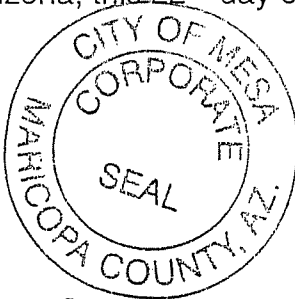
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR THE INSTALLATION OF FIBER OPTIC CABLE AND PULL BOXES ALONG THE SUPERSTITION AND RED MOUNTAIN FREEWAYS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

Section 1: That the cost sharing agreement between the State of Arizona Department of Transportation and the City of Mesa for the installation of fiber optic cable and pull boxes along the Superstition Freeway from Val Vista Drive to Crismon Road and along the Red Mountain Freeway from the Superstition Freeway, north to Southern Avenue (ADOT JPA No. 05-077); is hereby approved.

Section 2: That the City Manager, Christopher J. Brady, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 22<sup>nd</sup> day of May, 2006.



APPROVED:

Keno Hawker  
Mayor

ATTEST:

Sinda Crocker, Deputy  
City Clerk

ATTORNEY APPROVAL FORM

FOR THE CITY OF MESA

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA, an agreement among public agencies, which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declares this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 25<sup>th</sup> day of May, 2006.

Debra Spurr

Attorney



TERRY GODDARD  
Attorney General

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

CIVIL DIVISION  
TRANSPORTATION SECTION  
Writer's Direct Line:  
602.542.8855  
Facsimile: 602.542.3646  
E-mail: Susan Davis@azag.gov

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR05-1164TRN (**JPA 05-077**), an Agreement between public agencies, i.e., The State of Arizona and The City of Mesa, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 19, 2006

TERRY GODDARD  
Attorney General

SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:965903  
Attachment

**EXHIBIT "A"**  
**CITY OF MESA FMS COSTS**

Contractor's Bid Version  
JPA 05-077  
September 2, 2005

US60 - Gilbert Road to Power Road Widening  
TRACS: H6649 01C

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	EXTENDED AMOUNT
	<b>ITEM 1 - CITY OF MESA FMS WORK</b>				
7320456	PULL BOX (NO. 9) (CITY OF MESA)	EACH	39	\$ 1,600.00	\$ 62,400.00
7320788	SINGLE MODE FIBER OPTIC CABLE (96 FIBERS) (MAIN TRUNKLINE)	L.FT.	45,100	\$ 3.50	\$ 157,850.00
	<b>SUBTOTAL ITEM 1 - CITY OF MESA FMS WORK</b>				<b>\$ 220,250.00 (A)</b>
	MAINTENANCE OF TRAFFIC SHARE <sup>1</sup>				
	CONSTRUCTION SURVEYING AND LAYOUT SHARE <sup>2</sup>				
	CONTRACTOR QUALITY CONTROL SHARE <sup>3</sup>			1% of (A)	\$2,203.00
	MOBILIZATION SHARE <sup>4</sup>				
	<b>SUBTOTAL CONSTRUCTION COST</b>				<b>\$ 222,453.00 (B)</b>
	9% CONSTRUCTION ENGINEERING AND ADMINISTRATION <sup>5</sup>			9% of (B)	\$20,021.00
	DESIGN ENGINEERING & DESIGN ENGINEERING ADMINISTRATION <sup>7</sup>				\$10,000.00
	<b>TOTAL ITEM 1 (CITY OF MESA FMS WORK)</b>				<b>\$ 252,474.00</b>

Notes:

1. Maintenance of Traffic does not apply to this work.
2. Construction Surveying and Layout does not apply to this work.
3. Contractor Quality Control was calculated on a percentage basis (1.0% fixed rate) of the construction cost of the City Items.
4. Additional Mobilization costs do not apply.
5. Construction Engineering and Administration is calculated on a percentage basis (9% fixed rate) of the City Construction Cost.
6. Length of this project is approx 8.4 miles. Mesa is covering the cost for their fiber. (on US60, from Val Vista Drive to Crismon Road & on SR202L, from US60 up to Southern Avenue)
7. Design Engineering and Design Engineering Administration are a fixed cost at \$10,000.